

MAR 0 5 2003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Group Art Unit 1638

In re

Patent Application of

Paul Sun, et al.

Application No. 09/773,976

Confirmation No.: 6280

Filed: January 31, 2001

Examiner: Moonan, Francis P.

"ALFALFA HYBRIDS HAVING AT LEAST
75% HYBRIDITY"

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

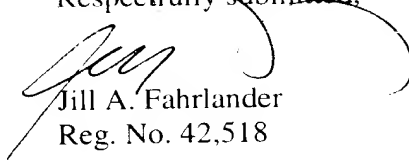
Transmitted herewith are the following documents in the above application:

Supplemental Amendment Under 37 CFR § 1.111;
Declaration of Paul Sun Under 37 CFR § 1.132; and
Response to Interview Summary.

Applicant claims small entity status. No additional fee is required. In the event Applicant has overlooked the need to request an extension of time, please consider this a request for same.

Charge or credit Deposit Account No. 13-3080 with any shortage or overpayment of the fees associated with this communication. A duplicate copy of this sheet is enclosed.

Respectfully submitted,



Jill A. Fahrlander
Reg. No. 42,518

File No. 87165-9051

Michael Best & Friedrich LLP
100 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4108
(414) 271-6560

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I, Leslie Lindsay, hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on the date of my signature.


Signature
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MAILED 05 2003

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Leslie Lindsay
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RESPONSE TO INTERVIEW SUMMARY

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

In response to the Office Communication mailed January 28, 2003 regarding the above-noted application, Applicants respond to the Examiner's Interview Summary as follows.

In the Interview Summary, the Examiner characterized a telephonic examiner interview held July 8, 2003. As Applicants indicated in their response to the previous Office Communication, the rejection of claims under 35 U.S.C. 112 was discussed. During the interview, the Examiner expressed his view that the claimed invention is not supported by the specification because he had interpreted the claims to broadly encompass synthetic varieties of alfalfa rather than hybrid alfalfa made from selected alfalfa clones. Applicants asserted that it would have been clear to one of ordinary skill in the art that the claimed hybrid alfalfa seed and plants were obtained by crossing selected clones, and supported their position by referring the Examiner's attention to specific sections of the specification. However, the Examiner maintained his broader construction of the claimed invention. The Examiner expressed his belief that Applicants should file a continuation-in-part application in order to

clarify the invention. Applicants indicated that they would take the Examiner's recommendation under advisement. However, upon further review of the specification and after further consideration of the Examiner's position in light of the specification, Applicants believe that the application as filed meets the written description requirement and that the claims are fully enabled by the application as filed. Accordingly, Applicants have elected to pursue prosecution of the instant application on the merits.


At paragraph 3, page 3 of the Interview Summary, the Examiner states "The inventor clarified that some of which (eg. A833) were established for the making of a Syn1 generation of DS9705Hybe, by vegetative propagation, since they were male infertile, per common synthetic variety practice, with use of a maintainer line of B209." Applicants respectfully submit that, contrary to the Examiner's assertion, DS9705Hyb is a hybrid resulting from a cross between A833 (a male sterile alfalfa line) and B209 (a maintainer line). DS9705 was grown from F1 seeds selectively harvested from the male sterile plants, and contrary to the Examiner's assertion, it is not a synthetic variety, nor did Dr. Sun represent that it is a synthetic variety.

In contrast to the instant invention, synthetic varieties are produced by random pollination of plants having perfect (containing both male and female parts) flowers. The Examiner stated at paragraph 4 (apparently with reference to the preceding paragraph) that "The examiner indicated that the information clarified the genotypic and phenotypic descriptions but that this clarifying information by the inventor would be new matter." Applicants maintain that the "clarifying information" summarized in paragraph 3 of the Interview Summary, with the exception of the inaccuracies noted in the preceding paragraph, were clearly described in the application as filed.

The Examiner stated that "other criteria in the making of said synthetic variety would be considered favorably by the examiner for inclusion in a C.I.P. including: the planting block design used to make the hybrid; the acreage or planting density used to make the synthetic variety invention; and the number of plants used to make the Syn-1 generation of the invention." The Applicants have made a hybrid alfalfa, not a synthetic variety. Applicants respectfully submit that they have described fully how to make and use the claimed invention in the specification, and that there is no need to submit additional information concerning planting block design, acreage, plant density, or the number of plants used to make the invention in order to meet the requirements of 35 U.S.C. 112.

No other fee is believed owing in connection with this submission. If a fee is owed, please charge such fee to Deposit Account No. 50-0842.

Respectfully submitted,


Jill A. Fahrlander
Reg. No. 42,518

Docket No.: 87165-9051
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